

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:21-cv-00320-MR-WCM

JOHNNIE R. SIMMONS, JR.

Plaintiff,

v.

SHELBY POLICE DEPARTMENT,
NICHOLAS MARLOW

Shelby Police Officer/Security at Walmart,

JOHN DOE 1

*Shelby Police Officer/Security at Walmart
Store*

Defendants.

ORDER

This matter is before the Court on the filing of Plaintiff's Amended Complaint (the "Amended Complaint," Doc. 13).

On October 25, 2021, Plaintiff, who was then proceeding *pro se*, filed a Complaint against the Shelby Police Department, Nicholas Marlow, and "John Doe 1." Doc. 1.

On December 14, 2021, the Shelby Police Department filed a Motion to Dismiss. Doc. 5.

The deadline for Plaintiff to respond to the Motion to Dismiss was extended through and including January 11, 2022. Doc. 9.

On January 10, 2022, Plaintiff filed the Amended Complaint. Plaintiff asserts that the Amended Complaint is filed pursuant to Rule 15(a)(1)(B) of

the Federal Rules of Civil Procedure.

Plaintiff's Amended Complaint raises certain issues. First, pursuant to Rule 15(a)(1)(B), Plaintiff had 21 days from the filing of the Motion to Dismiss within which to amend his complaint as a matter of course. Because the Motion to Dismiss was filed on December 14, 2021, that 21-day period expired on January 4, 2022.

Second, although the Amended Complaint appears to delete the Shelby Police Department as a Defendant, it also "incorporates" Plaintiff's original Complaint which makes claims against that entity. See Doc. 13 at 1. Thus, while it appears that Plaintiff now wishes to dismiss his claims against the Shelby Police Department, Plaintiff's new pleading "incorporates" a prior pleading that makes allegations against that party.

In the interest of judicial efficiency, the undersigned will construe the Amended Complaint (Doc. 13) as a Motion to Amend that seeks to withdraw Plaintiff's claims against the Shelby Police Department. The undersigned will grant that Motion to Amend pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure and will direct Plaintiff to file a Second Amended Complaint that removes the Shelby Police Department as a defendant in this matter. The Second Amended Complaint should contain a complete statement of the claims Plaintiff now wishes to make and without attempting to describe those claims through the incorporation of prior pleadings.

IT IS THEREFORE ORDERED THAT Plaintiff's Amended Complaint (Doc. 13), which the undersigned construes as a Motion to Amend, is **GRANTED**, and Plaintiff is **GRANTED LEAVE** to file, on or before **January 20, 2022**, a Second Amended Complaint as described above.

Signed: January 12, 2022

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf
United States Magistrate Judge

